

REMARKS/ARGUMENTS

Claims 33, 35 and 53 are currently pending in the above-identified application. Claims 33 and 53 are rejected under 35 USC § 103(a) as being obvious in light of Ibrahim (US 3,325,876) in light of Morman (US 5,116,662), Lodoen (US 4,798,880) and Smith et al (US 5,340,902). The Examiner admits that Ibrahim does not explicitly teach heating the fiber until the crystals are molten. The Examiner has not repeated the position that heating spandex fibers to a temperature greater than its melting point is known from Lodoen and Umezawa (US 6,623,585), but now states that such recitation would have been obvious “because it has been held that optimization of a result effective variable is within routine skill in the art”. However, it does not seem obvious to heat the fiber to a temperature where it becomes molten given Ibrahim’s warning in the paragraph beginning at column 2 line 40, that the elastic fibers are stretched an amount “less than their breaking elongation”. It is well known that molten materials will have much less strength than solid materials. It is therefore respectfully submitted that a person of ordinary skill in the art would try to avoid temperatures at which any portion of the fiber becomes molten, because it would be expected that such fibers would break too easily. Accordingly heating the fiber to a temperature in excess of a temperature at which at least a portion of the crystallites are molten, as recited in the pending claims, is beyond the realm of routine optimization.

Applicants do not contest the separate patentability of claim 35, but maintain the position that this claim is patentable due to its dependence on claim 33.

Claim 53 is rejected under 35 USC §103(a) as being unpatentable over Ibrahim. Claim 53 adds the limitation that the elastic fiber is combined with inelastic fiber to form a yarn prior to the reversed heat-setting operation set forth in claim 33. The Examiner has stated that Ibrahim teaches incorporating inelastic material with the fiber after the heating step, and then states that “rearrangement of process steps is within routine skill of one in the art.” Applicants assert that the order of the steps would not be considered interchangeable by one of ordinary skill in the art. While rearrangement of process steps may be interchangeable in *some* processes, it is not true that rearrangement of process steps can be done in *any* processes. In this particular case, it is logical that adding the inelastic fibers prior to stretching and prior

to heating the elastic fiber to a temperature at which it becomes partially molten would add complications. For example would the inelastic fiber hinder the ability to apply a biasing force to the elastic fiber? Or would the molten regions in the elastic fiber stick to the inelastic fiber, and if so would that cause processing difficulties? As these complications would readily be appreciated by a person of ordinary skill in the art, it is simply not correct to say that rearrangement of these process steps would be viewed as obvious.

Accordingly, the applicants courteously request that the rejections of claims 33, 35 and 53 under 35 USC § 103(a) be reconsidered and withdrawn.

Respectfully submitted,

/James T. Hoppe/
James T. Hoppe
Registration No. 35,899
Phone: 979-238-9039

October 19, 2009
P. O. Box 1967
Midland, MI 48641-1967
JTH/mr